

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Apple Canyon Utility Company	)	
	)	
Proposed general increase in water rates	)	Docket No. 12-0603
	)	
Lake Wildwood Utilities Corporation	)	
	)	
Proposed general increase in water rates	)	Docket No. 12-0604
	)	

**EXCEPTIONS AND BRIEF ON EXCEPTIONS**  
**OF THE PEOPLE OF THE STATE OF ILLINOIS**

**The People of the State of Illinois**

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July 12, 2013

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**BRIEF ON EXCEPTIONS AND EXCEPTIONS  
OF THE PEOPLE OF THE STATE OF ILLINOIS**

NOW COME the People of the State of Illinois (“the People” or “AG”), by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Part 200.830 of the Illinois Commerce Commission’s (“the Commission”) rules, 83 Ill.Admin.Code Part 200.830, and in accordance with the schedule established in this docket, hereby file their Brief on Exceptions and Exceptions to the Proposed Order (“PO”) issued by the Administrative Law Judges (ALJs) in the above-captioned docket on June 27, 2013, which PO will establish rates for Apple Canyon Utility Company (“Apple Canyon”) and Lake Wildwood Utilities Corporation (“Lake Wildwood”) (collectively the “Utilities” or the “Companies”).

**Introduction**

The People appreciate and commend the ALJ’s thoughtful consideration of some of the critical issues important to ratepayers raised in these consolidated cases and do not except to the following well-reasoned conclusions in the PO:

1. Leak and Boundary Surveys Costs
2. Additional Pro Forma Plant Additions: Well #1 (Apple Canyon)
3. Additional Pro Forma Plant Additions: Water Treatment Facility (Lake Wildwood)
4. Appeals Costs

The People do, however, except to the following conclusions in the PO:

1. Apple Canyon’s request for \$100,000 for tank painting; and
2. Adoption of the AG proposed adjustment to Cash Working Capital (“CWC”).

### **Exception No. 1: The Commission Should Disallow Apple Canyon's Proposed Tank Painting**

The People agree with the PO's conclusion that the painting of the Company's logo on a water tank, had the Company sought an amount to be recovered for it, would constitute non-recoverable goodwill advertising. PO at 15. The People, therefore, recommend only slight modification to the PO's language, as noted in the below exception, to generally reiterate the impropriety of a utility seeking to recover goodwill advertising expenses from ratepayers.

However, the People take greater exception to the PO's remaining conclusions on the tank painting issue. *Id.* Initially, the People note that the PO attempts to shift the burden of proof for this tank painting. The PO concludes, without further citation, that "the Intervenor have not testified that the tank does not need painting, just that ten years have passed." PO at 15. As the Commission is well-aware, "The burden of proof to establish the justness and reasonableness of the proposed rates or other changes, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility." 220 ILCS 5/9-201(c). The People, in their Initial and Reply Briefs and as discussed below, aptly demonstrated that the Company did not meet its burden of showing that the tank painting was necessary at this point in time. The People were not required to meet any burden beyond that or somehow show, as the PO surmises, that the tank did not need painting. Requiring such a demonstration on the part of the People is not supported by statute or Commission Rules. As such, any suggestion in the PO that the People have some burden of proof that has not been met should be stricken.

As the People demonstrated in their Initial and Reply Briefs, Apple Canyon failed to support its request to burden ratepayers with the \$100,000 cost of painting an existing water tower via a pro forma adjustment that increases rate base and amortization expense. AG Initial Brief at 7. The PO, however, reaches a contrary conclusion – and one that is not supported by

record evidence. In particular, the People noted three reasons why the Commission should reject the Company's request. First, the Company failed to provide evidence in the record that shows that this project is necessary *at this time*. Second, the Company failed to demonstrate that the cost of the project is known or measurable. Third, the Company failed to follow Commission Rules in presenting the water tower painting costs. AG Initial Brief at 7-8. The PO does not sufficiently acknowledge these three reasons and should therefore be modified.

The PO notes that the Company's witness testified that generally tank painting is required every 10 years and concludes that "operations and management at the Utilities had determined that the condition of this particular tank warranted completion of the project before that time." *Id.* This statement by itself is supported by Company testimony; however, the PO's adoption of it as a conclusion leads to a mischaracterization of the record evidence. The record is devoid of any discussion as to management's rationale for painting the tank *at this time*. AG Initial Brief at 8. Indeed, the only evidence in the record consists of a company witness who was not present for the meeting in which management's decision had been made, who simply testified that "management" had made the decision; there is nothing in the record to support *why* the tank had to be repainted at this time – two years prior to when it would otherwise be due.

The PO adopts the Company's own evidence that shows that projects of this type are expected to last for 10 years. AG Cross Ex. 5; AG/ACLPOA/LWA Joint Ex. 2.0 at 11. The People do not dispute this conclusion. The Company admits that the tank was last painted in 2005 – two years before it was due for painting. AG Cross Ex. 5. As shown in the People's Initial Brief, the Company has not provided a credible or supportable reason, nor even argued, why it must rush to paint the tank in 2013. AG Initial Brief at 8. The Company merely argues that management approved the project – with no discussion as to: why the water tower should be

painted sooner than its ten-year expected life; the need for the project; or the current condition of the water tower in the direct testimony. AG Initial Brief at 8; see Utilities Ex. 1.0 at 5; Utilities Ex. 2.0 at 4.

The PO relies heavily on the testimony of Utilities Witness Mr. Neyzelman, pre-filed by the Company, which provided the baseless conclusion that “operations and management had determined that the condition of this particular tank warranted the implementation the (sic) project for completion by May 2013” with no further description or evidence regarding the existing condition. AG Initial Brief at 8; Utilities Ex. 3.0 at 5; see Tr. at 82. Despite presenting the primary testimony for the Company, Mr. Neyzelman was not privy to any of the management meetings or discussions where the management decision to paint the tower was made. Tr. at 78, 83. When specifically asked about these decisions at the evidentiary hearing, Mr. Neyzelman referred the question to another witness – a witness who had not provided any testimony about the tank painting. Tr. at 78, 82, 83. The PO, however, overlooks the Company’s inability to support the need for the tank painting at this time. PO at 15. The Company failed to meet its burden and the Commission should disallow the expense of the tank painting.

Second, as demonstrated by the People, at no time during the pendency of this docket was the cost of this project known and measurable. AG Initial Brief at 9. The PO properly notes that proposed pro forma adjustments to the selected historical test year be “known and measurable changes in the operating results of the test year.” PO at 19; 83 Ill. Admin. Code 287.40. The Company has failed to reach this required standard where it had not yet entered into a contract near the end of the first quarter of 2013 (AG Cross Ex. 5) and it failed to provide a bid for the job until the eve of filing its rebuttal testimony (AG Cross Ex. 5; AG/ACLPOA/LWA Joint Ex. 1.0 at 5; AG/ACLPOA/LWA Joint Exhibit 2.0 at 11). The PO does not adequately

acknowledge that there are no known and measurable costs outside of a bid and the Commission should disallow this expense.

Third, Section 287.40 of the Code also mandates that “Any proposed known and measurable adjustment to the test year shall be individually identified and supported in the direct testimony of the utility.” 83 Ill. Admin. Code 287.40. (Emphasis added). As demonstrated by the People, the Company did not provide support for the estimated cost, nor did it support the need for the project in direct testimony, thereby violating Commission Rules. The Companies filed direct testimony on October 1, 2012. The bids supplied by the Company were dated February 21st through 23rd, 2013 – mere days before the Companies’ rebuttal testimony was due to be filed. AG Cross Ex. 5. See AG/ACLPOA/LWA Joint Ex. 1.0 at 6; AG/ACLPOA/LWA Joint Ex. 2.0 at 10 - 11. Unlike the conclusions in the PO, the record supports a finding that the Company scrambled to meet a known and measurable standard in the final days before the rebuttal testimony due date. For all of the reasons stated above, the People urge the Commission to reject the Company’s proposed recovery of \$100,000 in expenses for painting this water tank.

#### **Exception No. 1 Proposed Language**

In accordance with the arguments presented above, the Commission analysis and conclusion at page 15 should be modified as follows:

After reviewing the evidence, it appears that the amount requested by the Companies is more than \$5,000 lower than the cost to add the logo. Even though ~~Therefore,~~ the cost of the logo will not be recovered from ratepayers in this case, had. ~~—If the Companies’ request included the cost of the logo, the Commission would be hesitant to not approve recovery because it does appear to be~~ of this good will advertising.

The request for inclusion of the tank painting project in rate base for is denied ~~approved.~~ The Companies’ witness testified that generally tank painting is only done every 10 years, but that operations and management at the Utilities had determined that the condition of this particular tank warranted completion of the project before that time. However, the record evidence in this case demonstrates that the painting was last done eight years ago and the Company has not provided any justification to support its claims

~~that management decided to paint the tank early. Indeed, the intervenors have not testified that the tank does not need painting, just that ten years have not passed. The Commission sees no reason to deny recovery. Therefore, The the AG's adjustment is not adopted and the Commission finds it appropriate to include disallows it from in rate base the 10-year amortization of tank painting.~~

## **Exception No. 2: The Commission Should Adopt the AG Adjustment to Cash Working Capital**

The Commission should adopt the AG's proposed adjustment to more realistically reflect Cash Working Capital. As demonstrated by the People in their Initial and Reply Briefs, the Companies' calculation of cash working capital and failure to properly book tax prepayments in the accounting periods in which they occur result in ratepayers carrying more of a burden than they should shoulder. As discussed in greater detail in the People's Initial and Reply Briefs, the Companies appropriately agreed to remove some taxes from this calculation as required by suggested accounting principles. However, the cash working capital calculation for Lake Wildwood still includes \$2,154 for Personal property/Illinois Invested Capital Tax or "ICT" taxes, and the Companies failed to provide a rationale for including this ICT expense in the calculation. AG Initial Brief at 19-20. Therefore, the Commission should reject this additional expense.

The PO seems to adopt Companies' witness Neyzelman's rationale for justifying the inclusion of the ICT expense in the calculation. PO at 9. The PO, like the Companies, relies upon past Commission orders where similar calculations were approved without providing additional explanation. PO at 9; Utilities Ex. 2.0 at 2. These relied-upon cases, much like the testimony of Mr. Neyzelman and the evidentiary hearing, fail to address the merits of why taxes other than income should be included or provide any level of discussion of the issue. The cases merely represent those in which this approach has been allowed; they fail to directly address the



issue or discuss the merits of the issue. In addition, as demonstrated by the People in their Initial Brief, the Companies failed to support the ICT expense as a reasonable test year expense in this case. AG Initial Brief at 19-20. Because the Company has failed to meet its burden on this issue, the Commission should remove the remaining ICT expense from Lake Wildwood's calculation. The People's adjustment, on the other hand, removes the ICT expense and ensures that cash working capital is properly calculated and includes the removal of expenses necessary to reflect any additional adjustments approved by the Commission that could impact maintenance and general expenses and should be adopted by the Commission. AG Reply Brief at 5-6.

Moreover, the People's adjustment, unlike that of the Companies, follows applicable accounting regulations. Section 408 of the Uniform System of Accounts directs payments to be charged in the accounting period in which they are made. Section 408, USOA, National Association of Regulatory Utility Commissioners (1996). Because the Companies have inexplicably failed to follow the applicable accounting regulations to charge the taxes to the accounting period in which they are paid and because there is no support for following the previous cases on this issue, the Commission should reject the Companies' calculation, adopt the AG's recommendation, and revise the PO as suggested below.

Considering the facts of the case before us, the Commission should reject the Companies' proposal to include additional tax expenses other than income and should require the Company to appropriately account for prepaid taxes in their cash working capital calculation. Id.; AG IB at 19-20.

### **Exception No. 2 Proposed Language**

In accordance with the arguments presented above, the Commission analysis and

conclusion at page 9 should be modified as follows:

~~Consistent with prior decisions, the~~ The Commission finds that it is inappropriate to include taxes other than income (less real estate taxes) in the cash working capital allowance. ~~The Commission has approved this methodology not only for Lake Wildwood and Apple Canyon, but also for other small water and wastewater utilities. See, e.g., Dockets 11-0561-0566 (consol.).~~ The AG's proposed adjustment reflects the reality of the timing of certain taxes and the payment lag associated with those taxes. Because payment lags can have an impact on working cash needs, Staff's CWC calculations are ~~adopted~~ rejected and the AG's adjustment is ~~not~~ adopted.

## **Conclusion**

For the foregoing reasons, the People of the State of Illinois request that the Commission adopt the recommendations and proposed language above, and the recommendations contained in the People's Initial and Reply Briefs.

Respectfully submitted,

People of the State of Illinois  
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July 12, 2013